

83rd Legislature, Regular Session, 2013
New Laws Amending the Alcoholic Beverage Code

HOUSE BILLS

HB 232 by Guillen- A court may allow a minor residing in a county with less than 75K population (~205 counties) where an alcohol awareness class is not readily available to take an on-line class or do 8 hours of additional community service instead of taking an alcohol awareness course for certain violations. The bill details how to determine a minor's county of residence. (This does not involve TABC-approved seller training schools.) **Effective 6-14-13.**

HB 893 by Geren - Applies only to the Texas Rangers Stadium in Arlington. Under this new law, the independent concessionaire at the stadium may allow a patron who possesses an alcoholic beverage to enter or leave mixed-beverage-permitted areas of the stadium if the beverage is in an open container, appears to be possessed for present consumption, remains within the facility, excluding the parking lot, and was purchased legally in the stadium. **Effective 5-18-13.**

HB 1020 by Reynolds- Instead of courts referring minor defendants to take an alcohol awareness class approved by the now-defunct Texas Commission on Alcohol and Drug Abuse, this bill would require the minor to take an alcohol awareness class approved by the Texas Department of State Health Services or a drug and alcohol driving awareness course approved by the Texas Education Agency. (This does not involve TABC-approved seller training schools.) **Effective 6-14-13.**

HB 1917 by Rodriguez - Authorizes alcohol advertising on or affixed to the outside of a public transportation passenger vehicle or a vehicle for hire (bus, van, taxi, limo, pedicab, rickshaw, etc.) An incorporated city or town may, by ordinance, prohibit alcohol advertising on or affixed to a vehicle for hire. **Effective 6-14-13.**

HB 1953 by Senfronia Thompson - Dictates that a wholesaler who is paid by a retailer by check or draft must deposit it in the bank within five business days after it is received. **Effective 9-1-13.**

HB 2460 by Senfronia Thompson - A mixed beverage or private club permittee may not possess an ID tax stamp unless it is affixed to a bottle or container of liquor. **Effective 9-1-13.**

HB 2806 by Geren – A retail/winery account is not “delinquent” if the payment is received by the wholesaler not later than the fourth business day after the date payment is due under the credit law system. **Effective 6-14-13.**

HB 2818 by Sheffield - Changes the statutes regarding the effect of local option elections. Current law states that if a justice precinct (JP) holds an election, the only way to over-ride that election is to hold a subsequent election within the same boundaries of the JP at the time of

the first election, even if the boundaries have changed or the precinct no longer exists. HB 2818 authorizes a new election to be held using the current justice precinct boundaries.

Also authorizes the issuance of wine and beer retailer (on- and off-premise) permits (BGs), retail dealer's on-premises licenses (BEs), or late hours licenses (BLs), in an area that has approved the sale of mixed beverages (spirits, wine, and beer for on-premises consumption), and approved the sale of wine and beer for off-premises consumption.

Also authorizes the issuance of wine and beer retailer (on- and off-premise) permits (BGs), retail dealer's on-premises licenses (BEs), or late hours licenses (BLs), to restaurants that hold a Food and Beverage Certificate in an area that has approved the sale of mixed beverages in a restaurant that holds a Food and Beverage Certificate and approved the sale of wine and beer for off-premises consumption.

Effective 9-1-13.

HB 3142 by Bell - No longer requires the holder of a concealed handgun license to be proficient in a particular category of handgun or to be licensed to carry a specific category of handgun.

Effective 6-14-13.

HB 3307 by Geren - Defines alternating brewery proprietorship and contract brewing arrangement and authorizes brewers, nonresident brewers, manufacturers and nonresident manufacturers to engage in these activities, removing the requirement that they have been in business on May 1, 2005. Requires a bond for an entity involved in these activities that does not own a fee interest in a brewing facility.

A brewer, nonresident brewer, manufacturer and nonresident manufacturer shall verify to TABC on an annual basis that a brewing or manufacturing facility owned or controlled by the permit or license holder is not used to produce malt beverages primarily for a specific retailer or the retailer's affiliates. **Effective 9-1-13.**

HB 3572 by Hilderbran - Reduces the mixed beverage gross receipts tax from 14% to 6.7% tax paid by the permit holder and adds an 8.25% "mixed beverage sales tax" paid by the consumer.

Effective 1-1-14.

SENATE BILLS

SB 131 by Nelson - A winery permit holder may sell, offer for sale, and deliver wine, and a person may consume wine on the premises of a winery until 2 am on New Year's Day. This includes selling wine for on- and off-premises consumption. **Effective 9-1-13.**

SB 350 by Williams - Amends the requirements for holding a manufacturer's agent's warehousing permit. The permit may be issued to an entity that receives beer, ale, or malt liquor from another entity, or that other entity's immediate successor in interest, that meets certain criteria. **Effective 9-1-13.**

SB 409 by Watson - Current law says that if an order of suspension against a permit or license is pending or unexpired, or if TABC has initiated action to cancel or suspend a permit or license, no permit or license may be issued for, or transferred to, the same licensed premises. SB409 creates a new exception if the permit or license holder has been evicted from the premises under a final, nonappealable court judgment. **Effective 9-1-13.**

SB 515 by Eltife - Authorizes a brewpub to manufacture up to 10,000 barrels a year instead of 5,000. Authorizes brewpubs to sell their own malt beverages to wholesalers and distributors. Authorizes brewpubs holding a BG permit who only sell their own product to sell to retailers (up to 1,000 barrels), and to any qualified person outside of Texas. The total amount of malt beverages sold to Texas retailers may not exceed 1,000 barrels annually for each licensed brewpub location or 2,500 barrels annually for all brewpubs operated by the same licensee. The product sold directly to retailers is included in the 10,000 barrels production limit. **Effective 6-14-13.**

SB 516 by Eltife - Changes the limits on small brewers selling directly to retailers. Under current law, a brewer who makes less than 75,000 barrels annually can self-distribute any amount. Under SB 516, a brewer who makes less than 125,000 barrels annually can obtain a self-distribution permit and sell up to 40,000 barrels to retailers annually. **Effective 6-14-13.**

SB 517 by Eltife - Changes the limits on small manufacturers selling directly to retailers. Under current law, a manufacturer who makes less than 75,000 barrels annually can obtain a self-distribution license any amount. Under SB517, a manufacturer who makes less than 125,000 barrels annually can sell up to 40,000 barrels to retailers annually. **Effective 6-14-13.**

SB 518 by Eltife - Authorizes manufacturers and brewers who produce less than 225,000 barrels of malt beverages annually to sell up to 5,000 barrels annually of malt beverages produced on the premises to visitors at the brewery for on-premises consumption. Manufacturers and brewers may sell, offer for sale, and deliver malt beverages, and a person may consume malt beverages on the licensed premises, between 8 am and midnight on any day except Sunday and between 10 am and midnight on Sunday. **Effective 6-14-13.**

SB 559 by Duncan - Repeals sections related to making partial excise tax payments in August 2013 instead of September 2013. **Effective 6-14-13.**

SB 639 by Carona – Clarifies the prohibition on reach-back pricing. Prohibits a manufacturer from accepting payment for a territorial agreement. Nothing in section 102.75 AB Code shall interfere with the rights of a manufacturer or distributor from entering into contractual agreements that could be construed as governing ordinary business transactions. Nothing in the Code prohibits contractual agreements between members of the same tier who hold the same licenses and permits. **Effective 6-14-13.**

SB 642 by Van de Putte - Currently, the TABC grants an industrial permit for food processors to buy distilled spirits at retail establishments for use in food processing. SB 642 authorizes distilleries to sell bulk alcohol produced by the distiller to holders of industrial permits in Texas. **Effective 9-1-13.**

SB 652 by Van de Putte – Authorizes the transfer of bulk alcohol between members of the manufacturing tier, for manufacturing purposes, as permitted by federal law. Currently under federal law, distilleries may purchase bulk product from other distilleries and from breweries. Credit law restrictions apply to bulk purchases of liquor by the holder of an industrial permit from a wholesaler. **Effective 9-1-13.**

SB 828 by Van de Putte - Creates a Distiller's Agent's Permit for employees of a distillery so they can represent the distiller, solicit and take orders from wholesalers and conduct free tastings for consumers at package stores. [The final version of the bill does not authorize distiller's agents to provide samples to a package store as wholesalers can do.]

- The annual state fee is \$10. A surcharge will be set by rule.
- A distiller's agent may not solicit business directly or indirectly from a mixed beverage or private club permit holder unless accompanied by a wholesaler or their agent.
- A person may engage in the activities of a distiller's agent for a grace period of five days during which the person must obtain a distiller's agent's permit.
- A person may engage in the activities of a manufacturer's agent representing a nonresident seller for a grace period of five days during which the person must obtain a manufacturer's agent's permit.
- TABC may suspend or revoke the permit held by a distiller or nonresident seller based on an act or omission of the holder of a distiller's agent's permit or a manufacturer's agent's permit only if a supervisor was directly involved, knew of the act or omission, or failed to take reasonable steps to prevent the act or omission.

Effective 9-1-13.

SB 905 by Van de Putte - Authorizes a distillery located in a wet area to sell distilled spirits manufactured by the permit holder to the ultimate consumer:

- for consumption on the licensed premises (up to 3,000 gallons annually) and
- for consumption off the premises (up to 3,500 gallons annually)
 - in unbroken packages containing no more than 750 ml
 - no more than two 750 ml bottles or the equivalent to the same consumer in a 30-day period.

Hours of sale are the same as a mixed beverage or package store permit, depending on whether sale is for on- or off-premises consumption. No shipping or delivery or buying for someone else. The bottle must "bear a notice affixed to the bottle that" says the bottle is commemorative, states the month and year the bottle is sold and is signed by an agent/employee of the permit holder. The distiller must pay the Comptroller mixed beverage gross receipts tax for on-premise sales and collect sales tax for off-premise sales (updated 10-17-13). **Effective 9-1-13.**

SB 950 by Carona – Prohibits a nonresident seller from selling wine to a winery unless the nonresident seller is the primary American source of supply for the brand of wine. The primary source is the manufacturer or the source closest to the manufacturer in the channel of commerce from whom the product can be secured by Texas wholesalers and Texas wineries.

Clarifies that a spirits or domestic wine product may have only one primary American source of supply for Texas. A product may have more than one primary American source of supply to Texas if the product is a wine that is bottled or produced outside of the United States.

Before a permittee may ship distilled spirits or wine into Texas or sell spirits or wine in Texas, the permittee must register the product with TABC and provide proof that the permittee is the primary American source of supply. TABC may establish procedures for accepting proof, such as a letter of authorization, that a permittee is the primary American source of supply of the product or brand.

For rare or vintage wine acquired at auction and for which no federal certificate of label approval (COLA) is available, the TABC product registration application is not required to include a COLA in order to obtain approval from TABC.

Effective 9-1-13.

SB 1035 by Carona - Intended to streamline the licensing process by 1) having license applicants pay state fees directly to TABC instead of the county tax assessor-collector; 2) eliminating the requirement of hearings before the county judge in non-contested cases (no protests) but increasing the fee from \$5 to \$25; 3) codifying the practice of TABC giving 5% of the license fee to the county; 4) requiring that notice of application be posted in a newspaper by the applicant instead of the county clerk. **Effective 9-1-13.**

SB 1090 by Carona - Cleans up various sections of the Alcoholic Beverage Code that have been found to be confusing, outdated, inconsistent, or even unconstitutional. It also provides for gender-neutral language in several sections of the Code. Also authorizes co-packaging and for certain licensees and permittees to park branded promotional vehicles on retail premises.

Effective 9-1-13.

SB 1090 contains the following provisions:

Repeals two different definitions of criminal negligence passed in different bills during the 73rd Legislature, both numbered Section 1.08. It is replaced with subsection 1.04(26) which says that “criminal negligence” has the meaning assigned by Section 6.03, Penal Code.

Eliminates sections of the Code found to be unconstitutional restrictions on Free Speech in *Authentic Beverages Company, Inc. v. Texas Alcoholic Beverage Commission*, No. 1:10-CV-00710-SS (U.S. Dist. Ct. W.D.Tex., Dec.19, 2011).

- Removes the requirement that a malt beverage product include specific words on the label to designate the alcohol content.

- Authorizes prearrangement and preannouncement of promotional activities to be held on a retailer's premises, including preannouncing the purchase of alcoholic beverages to a consumer.
- Removes the prohibition against an advertisement of a brewery product referring to the alcohol content of the product.
- Authorizes a member of the manufacturing or wholesaler tier to, in its advertising, inform the public of where its products may be purchased. However, compensation may not be given or received by the manufacturer, wholesaler or retailer for this advertising.

Clarifies that TABC's administrator and assistant administrator are also known as executive director and deputy executive director.

In Section 5.15, changes "shall" to "may" with regard to the attorney general appointing up to six assistant attorneys to enforce the Code.

Amends Section 5.32 to say that TABC "may require persons engaged in the alcoholic beverage business to provide information, records, or other documents" instead of saying that TABC "may require the filing of reports and other data."

TABC may suspend or revoke a nonresident seller's permit based on an act or omission of the holder of a manufacturer's agent's permit only if a supervisor was directly involved, knew of the act or omission, or failed to take reasonable steps to prevent the act or omission.

Clarifies that Texas wineries are authorized to purchase from a non-resident seller wine intended for re-sale, in addition to wine intended for blending purposes.

Clarifies that wine and beer retailer off-premise permit holders can't have open containers of any alcohol on the premises unless it is during an authorized sampling event. Products must be sold in unbroken original containers.

A person may engage in the activities of the holder of an agent's permit or a manufacturer's agent's permit for a grace period of five days during which the person must obtain the permit.

Clarifies that the location of a storage permit does not have to be owned by the permit holder but may be leased as well.

Clarifies that selling alcohol using a coin-operated machine or similar device is prohibited if it is operated by the consumer.

Requires that notice of a license application be posted in a newspaper by the applicant instead of the county clerk.

Clarifies that tap handles for all malt beverages (not just beer) must be labeled with the name of the brand of product being dispensed.

Establishes a minimum age of 18 for the holder of a manufacturer's agent's permit.

Authorizes a person who holds a brewer's permit, nonresident brewer's permit, manufacturer's license, or nonresident manufacturer's license, or the person's agent or employee, to package alcoholic beverages in combination with other items if the package is designed to be delivered intact to the wholesaler or distributor and the additional items are branded and have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

Authorizes the holder of a manufacturer's license, non-resident manufacturer's license or non-resident seller's permit to display a branded promotional vehicle on the licensed or permitted premises of a retailer, whether outside or inside a structure on the premises, for not more than five hours a day.

Clarifies that a "first sale" under the Code when excise taxes are to be paid:

- includes sales by a brewpub to a consumer or to a retailer.
- does not include sales by a Texas distillery to a Texas wholesaler.

Repeals an obsolete section of the Code 31.05 which creates an exception for a beer manufacturer to own a marine mammal park and have a concessionaire sell alcohol on the premises.